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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Carlos Heredia,

10 Plaintiff,

11 v.

12 IPVision Incorporated, et al.,

13 Defendants.
14

No. CV-24-00116-TUC-RCC

ORDER

15 Pending before the Court is Plaintiff Carlos Heredia's Motion for Alternative
16 Service on Defendants. (Doc. 5.) Plaintiff filed his Complaint on February 27, 2024,
17 alleging claims against Defendants IPVision Inc., IPVision Global Inc., Ben Green, and
18 Martha Zamora. (Doc. 1.)

19 On April 24, 2024, Plaintiff filed the present motion because "extensive efforts at
20 personal service on Defendants have failed, and Plaintiff has good cause for failure to serve
21 them." (Doc. 5. At 1–2.) On March 7, 2024, a process server, Bradley Skattum, attempted
22 to serve Defendant Ben Green—who is also the statutory agent or registered applicant
23 agent for IPVision, Inc. and IPVision Global Inc.—at his primary residence. (*Id.* at 2.)
24 Skattum declared under oath that there was no answer at either gate and that he reattempted
25 service at this address on March 12, March 16, March 18, and March 22, 2024. (*Id.*)
26 Skattum also called and left a voicemail for Defendant Green on March 24, 2024. (*Id.*)
27 Defendant Green did not return the call. (*Id.*)

28 Similarly, Skattum attempted to serve Defendant Zamora at her place of business

1 on March 26, 2024. (*Id.*) The receptionist told Skattum that Defendant Zamora was in a
2 meeting. (*Id.*) Defendant Zamora later called Skattum who told her that he had legal
3 documents for her, and Defendant Zamora said she would call him back. (*Id.*) Skattum
4 declared under oath that Defendant Zamora did not call him. (*Id.* at 3.) On March 28, 2024
5 and April 3, 2024, Skattum again attempted to call Defendant Zamora at work to no avail.
6 (*Id.*)

7 Plaintiff seeks to serve Defendants by U.S. Mail and Certified U.S. Mail to the
8 business address listed by the Arizona Corporation Commission for IPVision Inc.—831 S.
9 51st St., Ste. C104, Phoenix, AZ 85044—and to the primary residence for Defendant
10 Green—2241 N. Colter Dr., Tucson, AZ 85715. (*Id.* at 4.) Plaintiff also seeks to complete
11 service by emailing a copy of the summons and complaint to bgreen@ipvis.com and
12 info@ipvis.com. (*Id.*)

13 "A federal court is without personal jurisdiction over a defendant unless the
14 defendant has been served in accordance with [Federal Rule of Civil Procedure] 4." *Benny*
15 *v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986). Rule 4(e) mandates that service on an
16 individual within the United States may be completed by (1) "following state law for
17 serving a summons in an action brought in courts of general jurisdiction in the state where
18 the district court is located or where service is made," or by (2) "delivering a copy of the
19 summons and of the complaint to the individual personally; leaving a copy of each at the
20 individual's dwelling or usual place of abode with someone of suitable age and discretion
21 who resides there; or delivering a copy of each to an agent authorized by appointment or
22 by law to receive service of process." Fed. R. Civ. P. 4(e)(1)–(2).

23 The Arizona Rules of Civil Procedure largely mimic the Federal Rules for personal
24 service. *See* Ariz. R. Civ. P. 4.1(d). However, Arizona permits service through alternative
25 means if the party files a motion which demonstrates that proper means of service are
26 "impracticable." Ariz. R. Civ. P. 4.1(k). In determining whether service is "impracticable,"
27 courts consider not whether service is "impossible, but rather that service would be
28 'extremely difficult or inconvenient.'" *Bank of New York Mellon v. Dodev*, 433 P.3d 549,

1 558 (Ariz. Ct. App. 2018) (quoting *Blair v. Burgener*, 245 P.3d 898 (Ariz. Ct. App. 2010)).
2 In addition, "three attempts at service on three different days" is adequate "to warrant
3 alternative means of service." *BMO Harris Bank, N.A., D.R.C. Invest., L.L.C.*, No. CV-13-
4 1692-PHX-LOA, 2013 WL 4804482, at *4 (D. Ariz. Sept. 9, 2013).

5 A court must also consider whether the alternative service comports with due
6 process. *See Rio Props., Inc. v. Rio Int'l Interlink*, 294 F.3d 1007, 1016–17 (9th Cir. 2002).
7 It does so where the method for alternative service is "reasonably calculated, under all the
8 circumstances, to apprise interested parties of the pendency of the action and afford them
9 an opportunity to present their objections." *Id.* (quoting *Mullane v. Cent. Hanover Bank &*
10 *Trust Co.*, 339 U.S. 306, 314 (1950)).

11 Here, Plaintiff outlines the various attempts at personal service on each Defendant
12 and, at this point, it appears Defendants are evading service. The Court finds that further
13 attempts at traditional personal service through a process server would be "extremely
14 difficult or inconvenient" and unlikely to result in successful service. Moreover, alternative
15 service through the proposed means of U.S. Mail, Certified U.S. Mail, and email comports
16 with due process because it is reasonably calculated, under these circumstances, to inform
17 Defendants of the pending action. The Court notes, however, that in addition to Plaintiff's
18 proposed method of service, Plaintiff should also send U.S. Mail and Certified U.S. Mail
19 to Defendant Zamora's place of business at 2025 E. Winsett St., Tucson, AZ 85719.

20 Accordingly,

21 **IT IS ORDERED** that Plaintiff's Motion for Alternative Service is **GRANTED**.
22 (Doc. 5.)

23 **IT IS FURTHER ORDERED** that Plaintiff may attempt to serve the Summons,
24 Complaint, **and a copy of this Order** on Defendants IPVision Inc., IPVision Global Inc.,
25 and Ben Green by

26 (1) U.S. Mail at 831 S. 51st St., Ste. C104, Phoenix, AZ 85044 **and** 2241 N.
27 Colter Dr., Tucson, AZ 85715;

28 (2) Certified U.S. Mail at 831 S. 51st St., Ste. C104, Phoenix, AZ 85044 and

2241 N. Colter Dr., Tucson, AZ 85715; and

(3) email to bgreen@ipvis.com and info@ipvis.com.

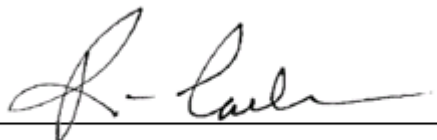
Plaintiff may also attempt to serve the Summons, Complaint, **and a copy of this Order** on Defendant Zamora by

(1) U.S. Mail at 831 S. 51st St., Ste. C104, Phoenix, AZ 85044 **and** 2025 E. Winsett St., Tucson, AZ 85719;

(2) Certified U.S. Mail at 831 S. 51st St., Ste. C104, Phoenix, AZ 85044 **and** 2025 E. Winsett St., Tucson, AZ 85719; and

(3) email to info@ipvis.com.

Dated this 29th day of April, 2024.



Honorable Raner C. Collins
Senior United States District Judge